IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 35055 of 2007(W)

AGAINST THE ORDER IN IA. 3373 /2007 IN
OS.237/2007 of PRL.MUNSIFF COURT,NEDUMANGAD

.....

PETITIONER:

SHAMNATH.A.RAHIM, S/O.ABDUL RAHIM,
DILSHAD MANZIL, VADAKKUMBHAGOM,
KAZHAKUTTOM.

BY ADV. SRI.P.B.SURESH KUMAR
SRI.LEO GEORGE

RESPONDENTS:

---

1. P.S.NIKHILA, D/O.PADMAVATHY,
AGED 47 YEARS, SREEPADMAM, KOPPAM, VITHURA, ALSO
FROM G-11, OVERSEAS BESANT APARTMENT, 33/1,
ASHTALAKSHMI KOVIL STREET, BESANT NAGAR,
CHENNAI-19.

2. MIRSA RAHIM, S/O.ABDUL RAHIM,
DILSHAD MANZIL, VADAKKUMBHAGOM,
KAZHAKUTTOM-695 582.

3. O.M.KUNJU, S/O.UTHUMAN PILLAI,
BEEN NURSERY, MARKET JUNCTION, VITHURA,
KOTTAKKAKOM, VITHURA-695 551.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/11/2007 ALONG WITH WPC.NO.35056/07, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

W.P.(C)NO.35055 OF 2007 – W

&

W.P.(C)NO.35056 OF 2007-W

Dated this the 28th day of November, 2007.

JUDGMENT

The subject matter of W.P.(C)No.35055/2007 is to set aside Ext.P11 order passed in I.A.No.3373/2007 in O.S.No.237/2007 whereby the court below directed issuance of a commission. The other writ petition is also filed challenging Ext.P11, which is an order passed in I.A.No.3372/2007 in O.S.No.227/2007. In both the cases, applications are filed whereby the writ petitioners had requested the court to consider whether the suit is barred under Section 47 of the Civil Procedure Code. If an order is passed on those applications, it will go to the root of the matter. If the court finds that Section 47 will operate as a bar, then the question of issuance of commission may not arise at all in both the suits.

2. Therefore, I direct the court below to consider the question whether the suit is barred by the provisions of Section 47 C.P.C be considered in the respective applications filed by the parties and depending upon the results of that finding, the court below may

implement the order, Ext.P11, in both the cases. If the court finds that it is maintainable, then the court can straight away implement Ext.P11. If the court finds otherwise, I direct the court to review the order and dispose of it in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

cl